

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD**

NOTICE OF EMERGENCY RULEMAKING

The Alcoholic Beverage Control Board ("Board"), pursuant to the authority set forth in D.C. Official Code § 25-351(a) (2001) and Section 303 of Title 23 of the District of Columbia Municipal Regulations ("DCMR"), 35 DCMR 4977 (June 24, 1988), hereby gives notice of the adoption of emergency rules replacing the existing section 305 of Title 23 DCMR to impose a moratorium on the issuance of any new retailer's license class CN, CR, CT, CX, DN, DR, DT, and DX in a portion of Georgetown which shall be known as the Georgetown Moratorium Zone.

The emergency action is necessary to prevent the filing of applications for the issuance of new retailer's licenses class CN, CR, CT, CX, DN, DR, DT, and DX which the Board has determined pursuant to D.C. Official Code §§ 25-313 and 25-314 would:

- (1) have an adverse effect on peace, order, and quiet;
- (2) have an adverse effect on residential parking needs and vehicular and pedestrian safety; and
- (3) contribute to an overconcentration of licensed establishments adversely affecting the Georgetown Moratorium Zone area described below.

Adoption of these rules on an emergency basis is also necessary for the immediate preservation of the public peace, health, safety, and welfare of the Georgetown Moratorium Zone while the Board conducts a public hearing, pursuant to D.C. Official Code § 25-354 (2001), to consider the November 17, 2003 request of Advisory Neighborhood Commission 2E to extend the current Georgetown Moratorium Zone for a five-year period.

These emergency rules were adopted by the Board on March 10, 2004. The rules became effective on that date. The emergency rules will expire 120 days from the date of effectiveness or upon publication of a Notice of Final Rulemaking in the D.C. Register, whichever occurs first.

Title 23 DCMR, Chapter 3 (Limitations on Licenses), is amended by replacing the existing section 305 to read as follows:

305. GEORGETOWN MORATORIUM ZONE

305.1 No Retailer's licenses Class CN, CR, CT, CX, DN, DR, DT, or DX shall be issued from the effective date of this section in the area that extends approximately 1800 feet in all directions from the intersection of Wisconsin Avenue and N Street, N.W., Washington, D.C. This area shall be known as the Georgetown Moratorium Zone.

305.2 The Georgetown Moratorium Zone is more specifically described as beginning at the intersection of 33rd and Q Streets; East on Q Street to Wisconsin Avenue; Southeast on Wisconsin Avenue to Q Street; East on Q Street to 29th Street; South on 29th Street to P Street; East on P Street to 28th Street; South on 28th Street to O Street; East on O Street to 27th Street; South on 27th Street to the Northwest Boundary of Rock Creek Park; Southwest along the Northwest Boundary of Rock Creek to the North Bulkhead of the Potomac River; West along the North Bulkhead of the Potomac River to the Key Bridge; North on the Key Bridge to M Street; West on M Street to 36th Street; North on 36th Street to O Street; East on O Street to 35th Street; North on 35th Street to P Street; East on P Street to 34th Street; North on 34th Street to Volta Place; East on Volta Place to 33rd Street; North on 33rd Street to Q Street.

305.3 The following establishments shall be exempt from the Georgetown Moratorium Zone:

(a) All hotels, whether present or future; and

(b) Establishments located in or to be located in Georgetown Park, Georgetown Park II, Prospect Place Mall, Georgetown Court, and Washington Harbor.

305.4 Nothing in this section shall prohibit the Board from approving the transfer of ownership of a Class C or D Retailer's license within the Georgetown Moratorium Zone that was in effect or for which an application was pending prior to November 25, 1992, subject to the requirements of the Act and this title.

305.5 Nothing in this section shall prohibit the Board from approving the transfer of a license from a location within the Georgetown Moratorium Zone to a new location within the Georgetown Moratorium Zone.

305.6 A license holder outside the Georgetown Moratorium Zone shall not be permitted to transfer its license to a location within the Georgetown Moratorium Zone.

305.7 Nothing in this section shall prohibit a valid protest of any transfer or change of license class.

305.8 The moratorium shall have a prospective effect and shall not apply to any license granted prior to, nor to any application pending on, November 25, 1992.

305.9 This section shall expire on July 8, 2004.

Child and Family Services Agency**Notice of Emergency and Proposed Rulemaking**

The Director of the Child and Family Services Agency ("CFSA"), acting pursuant to § 2(o) of the Child and Family Services Agency Establishment Amendment Act of 2000, effective April 4, 2001, D.C. Law 13-277, D.C. Official Code § 4-1303.03(a-1), (10), (12) and § 4 of the Youth Residential Facilities Licensure Act of 1986, effective August 13, 1986, D.C. Law 6-139, D.C. Official Code § 7-2103, hereby gives notice of her intent to amend Chapter 60 of Title 29 DCMR, "Foster Homes", by adding a new § 6027, by renumbering §§ 6027 through 6031 as §§ 6028 through 6032, respectively, by striking and inserting in its place a defined term in § 6099, and by adding two new defined terms to § 6099. The new section and its accompanying new definitions will permit the issuance of a temporary license to operate a foster home to certain kin.

The emergency that creates the need for this rule change is the immediate need to protect foster children by making possible their expedited placement with kin in studied and licensed foster homes. When a child must be removed from her or his home because of abuse or neglect, the child's immediate health, safety and welfare require the District to locate and place the child as quickly as possible in out-of-home placement that meets the child's specific, individual needs. For many children, kin (whether relatives or unrelated persons with longstanding ties to the child or family) who can bring the child into their home are the placement best suited to meet the child's urgent needs. However, the child's immediate protection also requires that before a child is placed in any out-of-home placement, both the caregiver (kin) and the home be studied and licensed. When the potential caregiver is kin to the child, however, the child's urgent needs can be protected with an initial and temporary licensing process that examines criminal, child protection and health histories, as well as the home itself, permits a temporary license if those are satisfactory, and requires the full panoply of protections set forth in Ch. 62 to be undertaken for a non-temporary license.

The Director of CFSA also gives notice of intent to adopt these rules in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

The emergency rules will become effective upon publication in the D.C. Register and will remain in effect for 120 days, or until publication of a Notice of Final rulemaking in the D.C. Register, whichever occurs first.

29 DCMR Ch. 60 is amended as follows.

A new § 6027 is added as follows:

6027 TEMPORARY LICENSE FOR KIN

6027.1 CFSA may issue a temporary license to operate a foster home only if:

(a) The applicant is kin to each foster child who would be placed in her or his

home;

(b) The applicant has submitted an application for a license to operate a foster home;

(c) The applicant has:

- (1) Received a satisfactory criminal records check from the Interstate Identification Index System;
- (2) Applied for a criminal records check in accordance with § 6008 of this Chapter;
- (3) Complied with the requirements of § 6009 of this Chapter concerning the Child Protection Register check;
- (4) Received a satisfactory safety assessment of the prospective foster home; and
- (5) Demonstrated the willingness and ability to provide a safe and secure environment for a foster child.

(d) All individuals eighteen (18) years of age or older residing in the prospective foster home have:

- (1) Received a satisfactory criminal records check from the Interstate Identification Index System;
- (2) Applied for a criminal records check in accordance with § 6008 of this Chapter; and
- (3) Complied with the requirements of § 6009 of this Chapter concerning the Child Protection Register check.

6027.2 An applicant is kin to a foster child if the applicant is:

(a) At least 21 years of age; and

(b) Either:

- (1) Is a relative of the foster child by blood, marriage, or adoption; or

- (2) Is identified by a relative of the foster child by blood, marriage, or adoption, in a sworn affidavit, to have close personal or emotional ties with the foster child or the foster child's family, which pre-dated the foster child's placement with the individual.

6027.3 A temporary license:

- (a) Permits a foster home to operate prior to issuance of an annual license and while the foster parent(s) attempts to satisfy the requirements for a license; and
- (b) Expires in one hundred twenty (120) days from the date of the temporary license, unless renewed.

6027.4 A temporary license may be renewed once and for no more than ninety (90) days if the:

- (1) Applicant is making a good faith effort to comply with all elements of the foster home licensing process as set forth in this Chapter;
- (2) Renewal is needed to complete the licensing process;
- (3) Licensing process is not completed for a reason that is beyond the control of the applicant; and
- (4) Applicant has otherwise complied with the requirements of this Chapter.

6027.5 A temporary licensee under this section shall actively and promptly take all steps required for full licensure under this Chapter.

6027.6 A foster child who is not kin to the applicant may not be placed in a foster home that has a temporary license.

6027.7 Except as specifically set forth in § 6027, all sections of this Chapter shall apply to a foster parent or foster home that has a temporary license.

The following sections and their subsections are renumbered as follows:

| Current section/subsections | Title | Renumbered as |
|-----------------------------|------------------------------------------|---------------|
| 6027 | Licensing process | 6028 |
| 6028 | Denial of license or renewal | 6029 |
| 6029 | Annual re-evaluation and license renewal | 6030 |

| | | |
|------|-------------------------------------|------|
| 6030 | Suspension or revocation of license | 6031 |
| 6031 | Appeal procedure | 6032 |

The definition of "applicant" is struck in its entirety, and the following definition is inserted in its place:

6099 DEFINITIONS

"Applicant" -- the person(s) applying to be licensed as a foster parent, including as appropriate the person applying for a temporary license, under this chapter of the DCMR.

The following definitions are added to 29 DCMR § 6099 following the definition of "revocation".

6099 DEFINITIONS

"Safety assessment" -- an assessment of an applicant's residence, including but not limited to its general physical environment, sanitation and external environment.

"Temporary license" -- a license to operate a foster home for a temporary period issued to a foster home that has complied with the requirements of § 6027 of this Chapter.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing within 30 days after the date of publication of this notice in the D.C. Register. Comments should be filed with Sarah R. Kaplan, Assistant General Counsel, Child and Family Services Agency, 400 6th Street, S.W., Washington, DC 20024. Copies of these proposed rules may be obtained without charge at this address.

BOARD OF EDUCATION

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The District of Columbia Board of Education ("Board"), pursuant to the authority set forth in D.C. Code, 2001 Edition, Section 38-101 et seq., hereby gives notice of emergency and proposed rulemaking action taken by the Board at its meeting on March 11, 2004. The purpose of this rulemaking is to ensure reasonable vacancy forecasting by the D.C. Public Schools for each upcoming school year. The rulemaking revises the date by which teachers and administrators are required to declare their intent to continue employment.

The emergency is necessitated by the pendency of the end of the school year. The emergency rulemaking took effect following approval by the Board at its meeting of March 11, 2004. It shall expire within 120 days of March 11, 2004, or upon publication of a Notice of Final Rulemaking in the D.C. Register, whichever occurs first. This rulemaking will amend section 1021 of DCMR Title 5. The Board also gives notice of its intent to take final rulemaking action to adopt this emergency and proposed rulemaking in not less than thirty (30) days from the publication of this notice in the D.C. Register.

Section 1021 is revised as follows:

1021. REAPPOINTMENT

1021.1 Former permanent employees of the Board of Education who separated through voluntary resignation which was accepted without prejudice may be reappointed without an examination if the following conditions are met:

- (a) Application for reappointment is made within five (5) years from the date of resignation;
- (b) Satisfactory performance ratings were received for each of the five (5) years preceding the resignation;
- (c) The applicant satisfies the eligibility requirements for the type of position sought that are in effect at the time of the application for reappointment; and
- (d) The applicant complies with the residency requirements of the Board of Education, as specified in § 1017.

1021.2 Probationary and permanent teachers and administrators who do not intend to continue employment with DCPS the following school year must

submit to the DCPS Office of Human Resources a Declaration of Intent Form no later than ~~May 30~~ April 15.

1021.3 Any probationary or permanent teacher or administrator who fails to submit a Declaration of Intent Form by ~~May 30~~ April 15 of any given school year, and fails to report for duty the following school year, or severs employment prior to the end of the following school year, shall be subject to the following penalties:

(a) Notice to any subsequent employer of violation and sanctions;

~~(b) Designation as ineligible for rehire for one (1) year;~~

~~(c)~~ (b) No formal release of information upon inquiry for ninety (90) days;
and

~~(d)~~ (c) Recoupment of any incentives or bonuses for the school year of violation.

1021.4 Request for waiver of sanctions by the Superintendent must be submitted to the Superintendent or the Superintendent's designee for consideration. The Superintendent shall consider exigent circumstances, including, but not limited to, personal or family illness, relocation of spouse, damage to professional reputation, safety and/or health risks in the workplace, changed circumstances or professional advancement, as grounds for waiver of sanctions.

1021.5 Any Declaration of Intent, which was submitted prior to ~~May 30~~ April 15 may be withdrawn on or before ~~May 30~~ April 15.

1021.6 Notice of imposition of sanctions by the Superintendent shall be provided to the probationary or permanent teacher or administrator at the time of imposition of sanctions. A request for reconsideration by the Superintendent may be submitted within thirty (30) days of receipt of notice of imposition of sanctions.

Written comments on the emergency and proposed rulemaking are invited from interested citizens. Such comments should be addressed to Mr. Russell Smith, Executive Secretary, D.C. Board of Education 825 North Capitol Street, N.E., Suite 9108, Washington, D.C. 20002. Copies of this rulemaking are available from the Office of the Board of Education by calling (202) 442-4289.

DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption, on an emergency basis, of a new Chapter 19 to Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Home and Community-Based Waiver Services for Persons with Mental Retardation and Developmental Disabilities." These rules establish eligibility requirements and other general standards for participation in the Medicaid Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver). These rules also establish standards governing reimbursement by the Medicaid program for personal care services furnished by Waiver providers. The Waiver will enable the District to provide home and community-based services to individuals aged 18 or over who would otherwise require institutional care in an intermediate care facility for persons with mental retardation.

The Centers for Medicare and Medicaid Services (CMS), formerly the federal Health Care Financing Administration has advised the District that the maintenance and expansion of all approved services to persons served by the Waiver is essential to the continuation of the Waiver. These rules establish the general terms and conditions governing the provision of all Waiver services. Emergency action is necessary for the immediate preservation of the health, safety and welfare of Waiver participants who are in need of Waiver services.

The emergency rulemaking was adopted on March 2, 2004 and became effective on that date. The emergency rules will remain in effect for one hundred and twenty days or until June 30, 2004, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*.

The Director also gives notice of the intent to take final rulemaking action to adopt these proposed rules not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Amend Title 29 DCMR by adding the following new Chapter 19 to read as follows:

**CHAPTER 19 HOME AND COMMUNITY-BASED WAIVER SERVICES
FOR PERSONS WITH MENTAL RETARDATION AND
DEVELOPMENTAL DISABILITIES**

1900 GENERAL PROVISIONS

- 1900.1 The purpose of this chapter is to establish criteria governing Medicaid eligibility for Home and Community-based Waiver Services for Persons with Mental Retardation and Developmental Disabilities (Waiver) and to establish conditions of participation for providers of Waiver services.
- 1900.2 The Waiver is authorized pursuant to section 1915 (c) of the Social Security Act, approved by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services (CMS) and shall be effective through November 19, 2007, plus any extensions thereof.
- 1900.3 The Waiver shall be operated by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA) under the supervision of the Department of Health, Medical Assistance (MAA).
- 1900.4 Enrollment of persons eligible to receive Waiver services shall not exceed the ceiling established by CMS.

1901 COVERED SERVICES

- 1901.1 Services available under the Waiver shall include the following:
- (a) Adaptive equipment, as set forth in section 928 of Title 29 DCMR;
 - (b) Adult companion, as set forth in section 944 of Title 29 DCMR;
 - (c) Attendant care, as set forth in section 927 of Title 29 DCMR;
 - (d) Case management, as set forth in section 940 of Title 29 DCMR;
 - (e) Chore services, as set forth in section 929 of Title 29 DCMR;
 - (f) Day habilitation, as set forth in section 945 of Title 29 DCMR;
 - (g) Dental services, as set forth in section 936 of Title 29 DCMR;
 - (h) Environmental accessibility adaptation services, as set forth in section 926 of Title 29 DCMR;
 - (i) Family training, as set forth in section 942 of Title 29 DCMR;
 - (j) Homemaker services, as set forth in section 938 of Title 29 DCMR;
 - (k) Independent habilitation, as set forth in section 993 of Title 29 DCMR;
 - (l) Nutritional counseling, as set forth in section 930 of Title 29 DCMR;
 - (m) Occupational therapy, as set forth in section 935 of Title 29 DCMR;
 - (n) Personal care services, as set forth in sections 5004 and 1910 of Title 29 DCMR;
 - (o) Personal emergency response system (PERS), as set forth in section 907 of Title 29 DCMR;

- (p) Physical therapy services, as set forth in section 934 of title 29 DCMR;
- (q) Preventive, consultative and crisis support, as set forth in section 937 of Title 29 DCMR;
- (r) Prevocational services, as set forth in section 920 of Title 29 DCMR;
- (s) Residential habilitation, as set forth in section 946 of Title 29 DCMR;
- (t) Respite care, as set forth in section 994 of Title 29 DCMR;
- (u) Skilled nursing, as set forth in section 933 of Title 29 DCMR;
- (v) Speech, hearing and language services, as set forth in section 932 of Title 29 DCMR;
- (w) Supportive employment, as set forth in section 929 of Title 29 DCMR; and
- (x) Transportation, as set forth in section 943 of title 29 DCMR.

1902 ELIGIBILITY REQUIREMENTS

1902.1 An individual eligible to receive Waiver services shall meet all of the following requirements:

- (a) Are eligible for Medicaid benefits and meet all other eligibility criteria applicable to Medicaid recipients, including citizenship and alienage requirements;
- (b) Be mentally retarded and developmentally disabled;
- (c) Be eighteen (18) years of age or older;
- (d) Be a resident of the District of Columbia as defined in D.C. Official Code § 7-1301.03(22); and
- (e) Have a level of care determination that the individual requires services furnished in an intermediate care facility for persons with mental retardation (ICF/MR).

1902.2 Waiver services shall not be furnished to a person who is an inpatient of a hospital, ICF/MR or nursing facility.

1902.3 Each individual enrolled in the Waiver shall be re-certified annually as having met all of the eligibility requirements as set forth in subsection 1902.1 for continued participation in the Waiver.

1903 PROVIDER QUALIFICATIONS

1903.1 Each prospective provider shall complete an application to participate in the Medicaid program and submit to MAA the following information:

- (a) A description of ownership and a list of major owners or stockholders owning or controlling five percent (5%) or more outstanding shares;
- (b) A list of Board members and their affiliations;
- (c) A roster of key personnel, their qualifications and a copy of their position descriptions;
- (d) Copies of job descriptions, resumes, licenses and certifications of all staff providing services;
- (e) Addresses of all sites where services will be provided to clients;
- (f) A copy of the most recent audited financial statement of the organization;
- (g) A completed provider application;
- (h) A copy of the basic organizational documents of the provider, including an organizational chart and current Articles of Incorporation;
- (i) A copy of the Bylaws or similar documents regarding conduct of the provider's internal affairs;
- (j) A copy of the business license or certificate of good standing;
- (k) A copy of the Joint Commission on Accreditation of Health Care Organization's certification, if required;
- (l) A copy of the Certificate of Need approval, if required;
- (m) A copy of the Certificate of Occupancy;
- (n) Program policies and procedures;
- (o) Staffing ratios, if required; and
- (p) Any other documentation deemed necessary to support the approval as a provider.

- 1903.2 MAA shall notify each prospective provider, in writing, of the approval or disapproval to become a provider of Waiver services, no later than 45 days of receipt of all required documentation. If additional information is requested by MAA, the provider shall have 30 days from the date of the request to submit the additional information. If an application is disapproved, the notice shall set forth the reason for disapproval. Failure to submit all required documentation may result in disapproval.
- 1903.3 Each provider shall enter into a provider agreement with MAA for the provision of Waiver services.
- 1903.4 The provider agreement shall specify the services to be provided, methods of operation, financial and legal requirements, and identification of the population to be served.
- 1903.5 Each provider shall be subject to the administrative procedures set forth in Chapter 13 of Title 29 DCMR during the provider's participation in the program.

- 1903.6 Each provider shall comply with all applicable provisions of District and federal law and rules applicable to the Title XIX of the Social Security Act, and all District and federal law and rules applicable to the service or activity provided pursuant to these rules.
- 1904 INDIVIDUAL HABILITATION PLAN (IHP) OR INDIVIDUAL SERVICE PLAN (ISP)**
- 1904.1 The IHP or ISP shall be developed by the Interdisciplinary Team (IDT) for each client.
- 1904.2 At a minimum, the composition of the IDT team shall include the client, the client's parent, guardian or other individual directly involved in the client's life and the case manager.
- 1904.3 The IHP or ISP shall be reviewed and updated annually by the IDT team. The IHP or ISP may be updated more frequently if there is a significant change in the client's status or any other significant event in the client's life which affects the type or amount of services and supports needed by the client or if requested by the client.
- 1904.4 The IHP or ISP shall contain at a minimum information regarding the client's medical and physical condition in support of the need for services, the type of medical and other services to be furnished regardless of funding source, the amount, frequency and duration of each service and the type of provider to furnish each service.
- 1904.5 A written plan of care shall be developed for each client by MRDDA. The plan of care shall contain all Waiver services to be provided to each client.
- 1904.6 MAA shall not reimburse a provider for services that are not authorized in the IHP or ISP, not included in the written plan of care, furnished prior to the development of the IHP or ISP, not prior-authorized by MRDDA or furnished pursuant to an expired IHP or ISP.
- 1904.7 After notification by MRDDA that a service has been authorized, each provider shall develop a written plan which shall address how the service will be delivered to each client.
- 1904.8 Each provider shall submit to the client's case manager a quarterly review which summarizes the client's condition, progress made toward achieving the desired goals and outcomes and identification and response to any issue relative to the provision of the service.
- 1905 LEVEL OF CARE**

- 1905.1 When an individual is determined to be likely to require a level of care as set forth in section 1902.1(e) of these rules and meets all other eligibility requirements, the individual or his or her authorized representative shall be informed by the case manager, as evidenced by the signed Waiver Beneficiary Freedom of Choice Form of:
- (a) any feasible alternatives under the Waiver; and
 - (b) the choice of either institutional or home and community- based services.
- 1905.2 Each individual who is not given the choice of home or community-based services as an alternative to institutional care in an ICF/MR as set forth in subsection 1909.1, shall be entitled to a fair hearing in accordance with 42 CFR Part 431, Subpart E.
- 1905.3 A registered nurse or qualified mental retardation professional shall perform the initial evaluation of the level of care and make a level of care determination.
- 1905.4 Re-evaluations of the level of care shall be conducted every twelve (12) months or earlier when indicated.
- 1905.5 Each re-evaluation shall be performed by persons with the same educational and professional qualifications as those for persons conducting the initial evaluations.
- 1905.6 Written documentation of each evaluation and re-evaluation shall be maintained for a minimum period of three (3) years, except when there is an audit or investigation, the records shall be maintained until the review has been completed.

1906 CLIENT RIGHTS

- 1906.1 Each provider shall develop and adhere to policies which ensure that each client receiving services has the following rights:
- (a) To be treated with courtesy, dignity and respect;
 - (b) To participate in the planning of his or her care and treatment;
 - (c) To receive treatment, care and services consistent with the IHP and ISP;
 - (d) To receive services by competent personnel who can communicate with the client;
 - (e) To refuse all or part of any treatment, care or service and be informed of the consequences;
 - (f) To be free from mental and physical abuse, neglect and exploitation from persons providing services;

- (g) To be assured that for purposes of record confidentiality, the disclosure of the contents of the client's records is subject to all the provisions of applicable District and federal laws and rules;
- (h) To voice a complaint regarding treatment or care, lack of respect for personal property by persons providing services without fear of reprisal;
- (i) To have access to his or her records; and
- (j) To be informed orally and in writing of the following:
 - (1) Services to be provided, including any limitations;
 - (2) The amount charged for each service, the amount of payment required by the client and the billing procedures, if applicable;
 - (3) Whether services are covered by health insurance, Medicare, Medicaid or any other third party source;
 - (4) Acceptance, denial, reduction, or termination of services;
 - (5) Complaint and referral procedures;
 - (6) The name, address and telephone number of the provider; and
 - (7) The telephone number of the hotline maintained by MRDDA.

1906.2 Each provider shall notify MRDDA and MAA, Office of Disabilities and Aging of any client incidents as set forth in MRDDA's Policy and Procedure entitled "Incident Management System".

1906.3 MRDDA shall notify MAA in writing of any complaints regarding treatment, care and services rendered by Waiver providers.

1907 RECORDS AND CONFIDENTIALITY OF INFORMATION

1907.1 Each provider shall allow appropriate personnel of MAA, MRDDA and other authorized agents of the District of Columbia government and the federal government full access to all records during announced and unannounced audits and reviews.

1907.2 Each provider shall maintain all records, including but not limited to progress reports, financial records, medical records, treatment records, and any other documentation relating to costs, payments received and made, and services provided, for six years or until all audits, investigations or reviews are completed, whichever is longer.

1907.3 Each client's record shall include, but not be limited to, the following information:

- (a) General information including each client's name, Medicaid identification number, address, telephone number, age, sex, name,

and telephone number of emergency contact person, physician's name, address and telephone number and case manager's name and telephone number;

- (b) A copy of the beneficiary freedom of choice form;
- (c) A copy of the current IHP or ISP;
- (d) A record of all services(s) provided, including description and dates of service;
- (e) A record of all prior authorizations for services;
- (f) A record of all requests for change in services;
- (g) A record of the client's initial and annual health history;
- (h) A discharge summary, if applicable; and
- (i) Any other records necessary to demonstrate compliance with all rules and requirements, guidelines and standards for the implementation and administration of this Waiver.

1907.4 Each provider shall secure client treatment records in a locked room or file cabinet and limit access only to authorized employees.

1907.5 The disclosure of treatment information by a provider shall be subject to all provisions of applicable federal and District laws and rules, for the purpose of confidentiality of information.

1908 INITIATING, CHANGING OR TERMINATING ANY APPROVED SERVICE

1908.1 The case manager shall be responsible for initiating, changing, or terminating Waiver services for each client in accordance with the IHP or ISP and identifying those clients for whom home and community-based services are no longer an appropriate alternative.

1908.2 The case manager shall notify MAA in writing whenever any of the following circumstances occur:

- (a) Death of a client;
- (b) Hospitalization of a client or any other circumstance in which Waiver services are interrupted for more than seven days;
- (c) The client is discharged or terminated from services; or
- (d) Any other delay in the implementation of Waiver services.

1908.3 Each provider shall notify the client or the client's representative and the case manager, in writing of the intent to terminate services at least fifteen (15) days prior to termination. The written notice shall state the reason for the termination.

1908.4 When the health and safety of the client or provider agency personnel is endangered, the fifteen (15) day advance notice shall not be required. The

provider shall notify the client or client's representative and case manager as soon as possible and a written notice sent on the date of termination.

1909 FAIR HEARINGS

1909.1 Each client shall be entitled to a fair hearing in accordance with 42 CFR 431 and D.C. Official Code § 4-210.01 if the government:

- (a) Fails to offer the client a choice of either institutional care in an ICF/MR or home and community-based waiver services;
- (b) Denies a waiver service requested by the client;
- (c) Terminates, suspends or reduces a waiver service;
- (d) Fails to give a client the provider of his or her choice; or
- (e) Terminates, suspends or reduces Medicaid eligibility.

1909.2 The Department of Human Services shall be responsible for issuing each legally required notice to the client or client's representative regarding the right to request a hearing as required in subsection 1909.1.

1909.3 The content of the notice issued pursuant to subsections 1909.1 and 1909.2 shall comply with the requirements set forth in 42 CFR 431.210 and D.C. Official Code § 4-205.55.

1910 PERSONAL CARE SERVICES

1910.1 Each provider shall comply with standards governing personal care services set forth in §§ 5000 through 5004 and 5006 of Title 29 DCMR.

1910.2 Each provider shall be reimbursed \$13.50 per hour for services rendered by personal care aides.

1910.3 Reimbursement for personal care services shall not exceed sixteen (16) hours per day per client regardless of the Medicaid funding source.

1999 DEFINITIONS

When used in this Chapter, the following terms and phrases shall have the meanings ascribed:

Client-An individual who has been determined eligible to receive services under the Home and Community-based Waiver for Persons with Mental Retardation and Developmental Disabilities.

Individual Habilitation Plan (IHP)- That plan as set forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (DC Law 2-137; D.C. Official Code §7-1304.03).

Individual Support Plan (ISP)- The successor to the Individual Habilitation Plan as defined in the court-approved *Joy Evans* Exit Plan.

Interdisciplinary Team (IDT)- A group of persons with special training and experience in the diagnosis and habilitation of mentally retarded persons which has the responsibility of performing a comprehensive evaluation of each client and participating in the development, implementation and monitoring of the client's ISP. The IDT team shall also include the client or client's representative.

Intermediate Care Facility for Persons with Mental Retardation- Shall have the same meaning as set forth in section 1905(d) of the Social Security Act.

Mentally retarded- Shall have the same meaning as set forth in D.C. Official Code § 7-1301.03 (19).

Qualified mental retardation professional- Shall have the same meaning as set forth in 42 CFR § 483.430(a).

Provider- Any entity that meets the Waiver service requirements, has signed an agreement with MAA to provide those services, and is enrolled by MAA to provide Waiver services.

Registered Nurse- A person who is licensed or authorized to practice registered nursing pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1202 et seq) or licensed as a registered nurse in the jurisdiction where services are provided.

Comments on the proposed rules shall be submitted in writing to Robert T. Maruca, Senior Deputy Director, Medical Assistance Administration, Department of Health, 825 North Capitol Street, N.E., 5th Floor, Washington, D.C. 20002, within thirty (30) days from the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained from the same address.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the D.C. Department of Human Services, pursuant to the authority set forth in the section 166 of the Burial Assistance Program Reestablishment Act of 1999, effective April 12, 2000 (D.C. Law 13-91; D.C. Official Code § 4-1001) (2001), and Mayor's Order 2000-13, dated January 21, 2000, hereby gives notice of her intent to adopt, on an emergency basis, this new Chapter 26 of Title 29 DCMR, which rulemaking was adopted by the previous Director on an emergency basis.

These rules enable the District to immediately establish the requirements and guidelines for the Department of Human Services' burial assistance program. In the District, there is an emergency need to assist residents with the high cost of funerals of family members who die without any financial resources. The emergency implementation of these rules enables the District to respond to this critical concern by providing assistance with burial costs of District residents who die with very limited resources.

The emergency rulemaking was adopted on March 3, 2004 and became effective immediately on that date. The emergency rules will expire one hundred and twenty (120) days from the date of adoption, or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever comes first.

The Director also gives notice of the intent to take final action to adopt these emergency and proposed rules not less than thirty (30) days from the date of the publication of this notice in the *D.C. Register*.

Title 29 DCMR is amended by deleting chapter 26 in its entirety and inserting in lieu thereof the following:

CHAPTER 26 BURIAL ASSISTANCE PROGRAM**2600 SCOPE**

2600.1 This chapter establishes the requirements for the Burial Assistance Program (Program), which shall include:

- (a) The process for applying for burial assistance;
- (b) The eligibility criteria for burial assistance;
- (c) The benefit and payment levels for the Program; and
- (d) The appeal procedures for aggrieved applicants.

- 2600.2 The Burial Assistance Program shall not be an entitlement and shall be subject to the availability of appropriations for the Program.
- 2600.3 The Program shall only provide assistance toward the burial and/or cremation costs for qualified District residents through funeral homes that are under contract with the District to receive funds from the Program.
- 2600.4 All payments shall be made directly to the funeral home or provider rendering the services.

2601 APPLICATION PROCESS

- 2601.1 Each application for burial assistance shall:
- (a) Submit a written application on a Department "Burial Assistance Application" form and signed by a relative, preferably the next of kin; and
 - (b) Establish that the deceased person is the person for whom assistance is being sought.
- 2601.2 The body of a deceased person shall not have been released to an undertaker at the time of the request for assistance.
- 2601.3 An authorized representative may apply on behalf of the applicant, if the applicant provides a written statement stating why he or she cannot attend an interview in person and provides the name and address of the person authorized to act on the applicant's behalf.
- 2601.4 An authorized representative shall be at least eighteen (18) years of age and have sufficient knowledge of the circumstances of the death to provide the requisite information, or be a person with legal authorization to act on behalf of the applicant.
- 2601.5 Each applicant shall interviewed on the date burial assistance is requested or, if that is not possible, on the following business day.
- 2601.6 Each applicant shall cooperate fully in establishing the deceased's eligibility. This shall include, but not be limited to, providing documentation or collateral proof of:
- (a) Household composition;
 - (b) Income and assets; and

(c) The cost of the funeral.

- 2601.7 The Department shall provide the applicant with a written request specifying the information needed to complete the application and discuss with the applicant how to obtain the information. The application shall be considered complete when all requested information is furnished to the Department.
- 2601.8 The Department shall not request that documentation be provided when it can obtain the information more easily than the person applying for burial assistance, if that determination can be made. The Department may use documents, telephone conversations, personal interviews, collateral sources, reports, correspondence, and conferences to verify the information.
- 2601.9 If the burial is expected to occur within two (2) business days of the date of submission of the completed application, the Department shall take all reasonable steps to process the application timely.
- 2601.10 An application shall be considered abandoned if the applicant has not submitted the required information or contacted the assigned Department worker or supervisor within fourteen (14) days of initial application.
- 2601.11 An application shall not be denied if the applicant is attempting to obtain and furnish the required information, and has informed the Department accordingly.
- 2601.12 The Department shall give each applicant whose application has been denied a clear, concise written statement of the reasons for the denial within three (3) business days of the denial. Each written notice shall also inform the applicant of the right to an administrative review and fair hearing to contest the denial, and the steps the applicant shall take to seek review.

2602 ELIGIBILITY CRITERIA

- 2602.1 In order to be eligible for burial assistance, the eligibility criteria set forth in this section shall be met.
- 2602.2 The deceased person shall be a person who was a resident of the District of Columbia immediately prior to his or her death.
- 2602.3 Countable assets shall not exceed eight hundred dollars (\$800).
- 2602.4 A prepaid funeral plan shall not be held by the deceased person nor any other person on behalf of the deceased person.

- 2602.5 The burial or cremation services shall be arranged through a funeral home under contract with the District to provide such service to persons receiving burial assistance.
- 2602.6 The total cost of the burial or cremation including the cost of the burial plot, cremation services and container, casket, preparation of the body, funeral service, transportation of the body to the funeral home and to the cemetery, transportation of family members to the funeral home, grave marker, and ritual and decorative items used at the funeral, grave site or wake shall not exceed two thousand dollars (\$2,000), except in the case of a deceased person who requires an oversized casket.
- 2602.7 The total cost of the burial for a deceased person who requires an oversized casket shall not exceed three thousand dollars (\$3,000).
- 2602.8 The limitations on the total cost of the burial and/or cremation shall not include costs associated with opening and closing the grave.
- 2602.9 The burial shall take place within the Washington Metropolitan Area.
- 2602.10 For purposes of this section, the phrase "countable assets" means:
- (a) The financial accounts (checking and savings) of the deceased person, or his or her spouse, if they were residing together at the time of death, or if the deceased person is a minor child, the parent(s);
 - (b) The net monthly earned and unearned income of the deceased person (or his or her spouse, if they were residing together at the time of death, or if the deceased person is a minor child, the parent(s)) that is received during the thirty (30) days preceding the application for burial assistance, less the Medicaid Medically Needy Income Level, based on the household size;
 - (c) The net final paycheck(s) or unearned income of the deceased person; and
 - (d) Cash available from the deceased person, or his or her spouse, if they were residing together at the time of death of the decedent.
- 2602.11 For purposes of this section, the following are excluded from countable assets:
- (a) Individual Retirement Accounts when not available to the deceased person prior to the funeral;

- (b) Life insurance policies, unless a legally responsible relative is the beneficiary;
- (c) Trust funds when not available to the deceased person prior to the funeral;
- (d) Vehicles;
- (e) Real Property; and
- (f) Other assets not immediately accessible prior to the funeral.

2602.12 For purposes of this section, the phrase "District resident" means:

- (a) A person who is living voluntarily and not for a temporary purpose within the District;
- (b) A person that a District agency places in an institution located in another state; or
- (c) A person who resides in an institution outside the District including, but not limited to, a hospital or nursing facility and he or she retains a home or his or her spouse or parent maintains residence in the District.

2603 BENEFITS AVAILABLE FOR BURIAL AND CREMATION

2603.1 When a deceased person meets the eligibility criteria described in section 2602 and an application has been filed and approved as required under section 2601, one (1) of the following shall occur:

- (a) Eight hundred dollars (\$800) shall be paid for burial assistance; or
- (b) Four hundred and fifty dollars (\$450) shall be paid for cremation assistance.

2604 APPEALS

2604.1 Each aggrieved applicant shall have the right to appeal a denial of burial or cremation assistance.

2604.2 An applicant shall have the right to request a fair hearing by giving a clear expression, oral or written, that he or she would like the opportunity to present the issue by which he or she is aggrieved to a higher authority.

- 2604.3 The request for a fair hearing shall be accepted by any staff member involved in the eligibility determination process.
- 2604.4 The applicant shall have ten (10) calendar days from the date of the notice described in subsection 2601.12 to file an appeal.
- 2604.5 An administrative review shall be held, unless waived by the applicant, as soon as possible but no later than ten (10) business days following the request for appeal.
- 2604.6 The purpose of the administrative review shall be to ascertain the validity of the Department's position and, if possible, resolve the claim.
- 2604.7 If the applicant is not satisfied with the results of the review or has waived the review, or he or she does not appear at the review, the hearing shall be held as scheduled.
- 2604.8 The hearing shall be held at a time, date, and place designated by the Department.
- 2604.9 During the hearing, an applicant shall have the right to:
- (a) Examine the contents of the case record and all documents and records to be used by the Department at the hearing;
 - (b) Represent himself or herself, or use an authorized representative;
 - (c) Present witnesses; and
 - (d) Question or refute any testimony or evidence presented by the Department, including having the opportunity to confront and cross-examine witnesses.
- 2604.10 The Department shall not be represented by an attorney at the hearing or administrative review, unless the applicant is represented by an attorney.
- 2604.11 Hearings shall be conducted by an impartial official who is designated by the Director.
- 2604.12 The recommendations of the impartial official shall be based solely on evidence and other material introduced at the hearing and in the Department's case file.
- 2604.13 A copy of the hearing official's findings of fact, conclusions of law and recommendations shall be sent to the applicant and his or her authorized or legal representative.

- 2604.14 The Director, or his or her designee, shall make the final decision on all appeals which are binding and shall have immediate effect. A written notice of the decision shall be sent to the applicant and his or her authorized or legal representative.
- 2604.15 The Department will take all reasonable steps to hold a hearing, make a final decision, and where the decision is to grant benefits, provide burial assistance in a timely manner.
- 2604.16 In each case where a decision favorable to the applicant is rendered, the Department shall issue payment within thirty business days after the completion of the administrative review or hearing
- 2604.17 Any applicant who is dissatisfied with a final decision may seek judicial redress by filing in the District of Columbia Appeals a written petition for review within thirty (30) business days following the receipt of the final decision of the Department.
- 2604.18 The applicant shall be informed in writing of his or her right to appeal an adverse final decision of the Department to the District of Columbia Court of Appeals.

2699 DEFINITIONS

- 2699.1 When used in this chapter, the following terms shall have the meanings ascribed:

Department - the Department of Human Services.

Director - the Director of the Department of Human Services.

Spouse - the husband or wife of the deceased person.

Comments on the proposed rules shall be submitted in writing to Kate Jesberg, Administrator, Income Maintenance Administration, 645 "H" Street, N.E., Fifth Floor, Washington, D.C. 20002, within thirty (30) days from the date of the publication of this notice in the *D.C. Register*. Copies of these rules may be obtained by writing to the above address.